

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

AGENCY: Air Resources Board	)	DECISION OF DISAPPROVAL
	)	OF REGULATORY ACTION
ACTION: Amendment of Section	)	(Gov. Code Section 11349.3)
94011 of Title 17 of the California	)	
Code of Regulations	)	OAL File No. 01-0202-05 SR
_____	)	

**BACKGROUND**

The Air Resources Board proposed more rigorous standards and test procedures for Board certification of equipment used for gasoline vapor recovery during refueling of vehicles. The regulations were submitted to OAL for review on February 2, 2001, and approved on March 20, 2001, with one exception. The amendment proposed for section 94011 updated the Board's *Certification Procedure for Vapor Recovery Systems of Dispensing Facilities*, which is incorporated by reference in the regulation. The update of the certification procedure contained a new Section 18 entitled "DURATION AND CONDITIONS OF CERTIFICATION." OAL disapproved Section 18 in its entirety; everything else was approved, with an effective date of April 1, 2001.

**DECISION**

OAL disapproved Section 18 of CP 201 because it would have established a limitation on the duration of vapor recovery system certifications that is vague and does not meet the clarity standard for proposed regulations.

**DISCUSSION**

Under the Board's current procedure there is no expiration date specified for its certification of a vapor recovery system. The update of CP-201 included a new Section 18, which contains the following language:

"Vapor recovery systems shall be certified for a period of time not to exceed four years; the Executive Officer may specify a shorter duration. The certification Executive Order shall specify the date on which the certification shall expire if it is not reissued."

The proposed rule does not provide a clear indication of how long the certifications should last. There is very little to guide the Executive Officer in exercising the discretion this rule allows to choose an expiration date other than the maximum of 4 years. There is a Table 18-1, that does describe a circumstance where it would be appropriate to extend a certification for a maximum of one year, but its utility as a guide to other situations is rather limited. In speaking with the Board's representative, we learned that the Board would like to have some flexibility when making certifications, limiting the duration to

less than four years when the testing, or documentation of satisfactory performance is less compelling or when a certified system is supplemented with additional equipment requiring certification. The rule should clearly set forth criteria to guide the Executive Officer's discretion to issue a certification for a period of less than 4 years. Without standards, applicants have very little to inform them of the length of the certification they may expect in return for their substantial investment in testing a system to demonstrate its compliance with the Board's emission limits. By adding clear criteria for this decision the Board can help assure that the affected public will easily understand how long certifications should last, and when renewal may be required.

For the reasons described above, OAL disapproved proposed Section 18 of CP-201.

Date: March 27, 2001

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